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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43662
Plaintiff-Respondent,)	
)	Jerome County Case No.
v.)	CR-2015-1133
)	
MISTY LEEANN PRESTWICH,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Prestwich failed to establish that the district court abused its discretion, either by imposing a sentence of five years fixed upon her guilty plea to felony eluding a peace officer, or by denying her Rule 35 motion for a reduction of sentence?

Prestwich Has Failed To Establish That The District Court Abused Its Sentencing Discretion

On March 10, 2015, Prestwich failed to submit to a traffic stop and led officers on a “high speed chase” through several counties, beginning “in either Bonneville or Bingham County,” proceeding through Bannock and Minidoka Counties, and ultimately

ending in Jerome County. (PSI, pp.4-5, 9;¹ 10/19/15 Tr., p.6, L.21 – p.7, L.10; Motion to Reconsider Sentence Pursuant to Idaho Criminal Rule 35, pp.1-2 (Augmentation).) Prestwich “was passing people all over the place, being very unsafe,” and one officer “had to slam on his brakes in order to avoid hitting other cars” after Prestwich “pulled out in front of him.” (10/19/15 Tr., p.7, Ls.1-7.) An officer attempted to stop Prestwich’s vehicle on I-84 by deploying “spikes” at milepost 182; however, Prestwich avoided the spikes and continued driving, reaching speeds of 110 miles per hour. (PSI, pp.4-5.) Another officer deployed spikes at milepost 177 and, while he was still on or near the roadway, Prestwich swerved toward him, causing the officer to run “back into the median because [he] was scared [Prestwich] was going to run [him] over and kill [him].” (PSI, pp.4, 21-22.) Prestwich’s vehicle slid into the median and crashed. (PSI, pp.4, 22.)

The state charged Prestwich with aggravated assault on law enforcement personnel, with a deadly weapon enhancement, and felony eluding a peace officer. (R., pp.45-47.) Pursuant to a plea agreement, Prestwich pled guilty to felony eluding a peace officer, and the state dismissed the remaining charge and enhancement. (R., pp.74-75, 87.) The district court imposed a sentence of five years fixed. (R., pp.80-86.) Prestwich filed a notice of appeal timely from the judgment of conviction. (R., pp.88-91.) She also filed a timely Rule 35 motion for a reduction of sentence, which the district

¹ PSI page numbers correspond with the page numbers of the electronic file “APPEAL #43662 CONFIDENTIAL EXHIBITS MISTY PRESTWICH.pdf.”

court denied. (Motion to Reconsider Sentence Pursuant to Idaho Criminal Rule 35; Order Denying Rule 35 Motion (Augmentations).)

Prestwich asserts her sentence is excessive in light of the nature of the offense, her character, her lack of a substance abuse problem, because she had amassed a total of 14 months of “significant employment” by the age of 28, and because she previously topped out a five-year sentence for felony eluding after she flopped her rider and refused to participate in prison programming. (Appellant’s brief, pp.3-5; 10/19/15 Tr., p.13, Ls.3-7, 16-18; PSI, pp.3, 10, 13.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant’s probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for felony eluding a peace officer is five years. I.C. §§ 18-112, 49-1404(2). The district court imposed a five-year fixed sentence, which

falls within the statutory guidelines. (R., pp.80-86.) At sentencing, the state addressed the serious nature of the offense, Prestwich's ongoing perilous criminal offending, her failure to rehabilitate or be deterred, and the great danger she presents to society. (10/19/15 Tr., p.6, L.13 – p.11, L.9 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Prestwich's sentence. (10/19/15 Tr., p.16, L.6 – p.18, L.18 (Appendix B).) The state submits that Prestwich has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Prestwich next asserts that the district court abused its discretion by denying her Rule 35 motion for a reduction of sentence because, after she was sentenced in this case, she received a lesser sentence for her felony eluding a peace officer conviction in Bannock County. (Appellant's brief, pp.5-7.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Prestwich must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Prestwich has failed to satisfy her burden.

The only "new" information Prestwich provided in support of her Rule 35 motion was that her sentence for felony eluding a peace officer in her Bannock County case was five years, with three years fixed, which is less than the five-year fixed sentence

she received for felony eluding a peace officer in this case. (Motion to Reconsider Sentence Pursuant to Idaho Criminal Rule 35 (Augmentation).) Prestwich did not include any information describing her Bannock County offense other than her statement that the Bannock County conviction was “for the same course of conduct for which she was charged in Jerome County,” and, therefore, her sentence in this case should “mirror that of Bannock County” so that she may be placed on parole and have “more programming available to her.” (Id., pp.1-2.) That Prestwich received a lesser sentence in Bannock County, which is near the area in which her “high speed chase” began, does not entitle her to a reduction of sentence in this case, which is aggravated by the fact that, by the time she reached Jerome County, Prestwich had been fleeing – at high rates of speed, swerving and weaving on the roadway, and very nearly causing numerous accidents – through approximately six counties and, once in Jerome County, she swerved toward an officer who was on foot, causing him to run out of the way, in fear for his life. (PSI, pp.4-5, 9; 10/19/15 Tr., p.6, L.21 – p.7, L.10.) Furthermore, Prestwich has not taken advantage of previous programming opportunities, choosing instead to “top out her time rather than do any programming.” (10/19/15 Tr., p.13, Ls.3-7.)

In its order denying Prestwich’s Rule 35 motion, the district court stated:

The defendant has a prior history of eluding peace officers in the operation of a motor vehicle. The relevant information in her Jerome County case demonstrated that the defendant's driving behavior placed law enforcement and the motorist[s] on the highway in serious peril and danger and that the defendant operated her motor vehicle without regard to the danger to others. The Court at sentencing considered the four goals of sentencing, particularly punishment and rehabilitation and the factors of I.C. § 19-2521. The Court was also aware at sentencing that she had a similar charge pending in Bannock County that she had yet to appear upon. The opinion of a sentencing judge in another but related

case does not necessary [sic] mandate that this Court decide in a similar fashion. The mere fact that the defendant may have received what she would characterize as a more desired sentence does not mean or suggest that the sentence imposed by this court is excessive. This Court does not find that the sentence imposed in this case is excessive, even considering the sentence imposed in her Bannock County case.

(Order Denying Rule 35 Motion, p.3 (Augmentation).) The state submits that by failing to establish that her sentence was excessive as imposed, Prestwich has also failed to establish the district court abused its discretion by denying her Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm Prestwich's conviction and sentence and the district court's order denying Prestwich's Rule 35 motion for a reduction of sentence.

DATED this 25th day of April, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of April, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

<p>1 COURTROOM OF THE DISTRICT COURT</p> <p>2 FIFTH JUDICIAL DISTRICT</p> <p>3 JEROME COUNTY JUDICIAL ANNEX</p> <p>4 JEROME COUNTY, JEROME, IDAHO</p> <p>5 OCTOBER 19, 2015, MONDAY, 10:50 A.M.</p> <p>6</p> <p>7 THE COURT: All right. It's now 10:50,</p> <p>8 October 19, 2015. We'll take up the matter of State</p> <p>9 of Idaho vs. Misty Prestwich, CR 2015-1133. The</p> <p>10 record will reflect Ms. Prestwich is present in</p> <p>11 court with counsel, Ms. DePew. The State's</p> <p>12 represented by Mr. Horgan. This is the time and</p> <p>13 place set for sentencing.</p> <p>14 On August 24, 2015, Ms. Prestwich entered</p> <p>15 a plea of guilty to alluding a peace officer, a</p> <p>16 felony, maximum penalty for which is up to five</p> <p>17 years in the state penitentiary and a fine of \$1,000</p> <p>18 or both. The defendant would also be subject to</p> <p>19 having her driving privileges suspended for a</p> <p>20 minimum of one year up to three years after release</p> <p>21 from imprisonment.</p> <p>22 Is there any just or legal cause as to</p> <p>23 why judgment should not be pronounced at this time?</p> <p>24 MS. DEPEW: Defense knows of none.</p> <p>25 MR. HORGAN: No, Your Honor.</p> <p>3</p>	<p>1 THE COURT: All right. The Court does</p> <p>2 determine that more than two days have elapsed from</p> <p>3 date of plea to date of sentencing. The Court has</p> <p>4 received and reviewed the presentence investigation</p> <p>5 report dated October 6th, 2015.</p> <p>6 Ms. DePew, have you and your client had</p> <p>7 sufficient time to review the content of the PSI?</p> <p>8 MS. DEPEW: Yes, Judge.</p> <p>9 THE COURT: And are there any changes,</p> <p>10 corrections or objections to you content of the</p> <p>11 report?</p> <p>12 MS. DEPEW: Judge, the only change or</p> <p>13 correction we would have with regard to page 12,</p> <p>14 education, Ms. Prestwich tells me that she has</p> <p>15 absolutely obtained her GED and actually attended</p> <p>16 two years of University of Phoenix on line, not</p> <p>17 three months, and is working towards a psychology</p> <p>18 degree. So she does have her high school diploma --</p> <p>19 or GED.</p> <p>20 THE COURT: All right.</p> <p>21 Ms. Prestwich, have you had sufficient</p> <p>22 time to review the content of the PSI?</p> <p>23 THE DEFENDANT: Yes.</p> <p>24 THE COURT: And other than as indicated by</p> <p>25 your attorney, do you have any changes, corrections</p> <p>4</p>
<p>1 or objections to the content of that report?</p> <p>2 THE DEFENDANT: No.</p> <p>3 THE COURT: Parties have any further or</p> <p>4 additional evidence for the Court's consideration?</p> <p>5 MR. HORGAN: Your Honor, Trooper Hausauer is</p> <p>6 here either as a victim himself or speaking on</p> <p>7 behalf of the Idaho State Police. I believe that's</p> <p>8 appropriate in this case. Do you want to do that</p> <p>9 now?</p> <p>10 THE COURT: Sure. That's fine.</p> <p>11 MR. HORGAN: Trooper.</p> <p>12 THE COURT: Trooper, if you could please state</p> <p>13 your name for the record.</p> <p>14 TROOPER HAUSAUER: Michael Hausauer,</p> <p>15 H-A-U-S-A-U-E-R.</p> <p>16 THE COURT: Go ahead.</p> <p>17 TROOPER HAUSAUER: So I was alerted that there</p> <p>18 was a pursuit that started in eastern Idaho and that</p> <p>19 the Dodge was headed west and to -- If possible, to</p> <p>20 get set up in position so I could deploy spikes in</p> <p>21 order to get the vehicle stopped. I ended up</p> <p>22 getting set up, and I was able to get the spikes</p> <p>23 deployed. When I threw the spikes, the driver</p> <p>24 swerved in my direction, scared the living daylight</p> <p>25 out of me. I went running back into the median, and</p> <p>5</p>	<p>1 I thought, "Man, my wife is going to be a widow."</p> <p>2 So afterwards went and -- the driver crashed. We</p> <p>3 got her out of the vehicle, got medical care, and</p> <p>4 here we are today.</p> <p>5 THE COURT: Thank you.</p> <p>6 All right, then, Mr. Horgan, any further</p> <p>7 evidence for the Court's consideration?</p> <p>8 MR. HORGAN: No, Your Honor.</p> <p>9 THE COURT: All right. All right, then,</p> <p>10 Mr. Horgan, I'll hear the State comments,</p> <p>11 recommendations.</p> <p>12 MR. HORGAN: Thank you, Your Honor.</p> <p>13 Essentially going to recommend five years fixed to</p> <p>14 serve and a three-year suspension of her driving</p> <p>15 privileges in this case.</p> <p>16 We'll start a little bit with the PSI,</p> <p>17 but I think the Trooper basically laid out pretty</p> <p>18 well what happened. This woman started this chase.</p> <p>19 If you look at her version of events on page four,</p> <p>20 she says, "My high-speed chase" almost like she's</p> <p>21 proud of it. It started in either Bonneville or</p> <p>22 Bingham County, Your Honor, came down I-15, turned</p> <p>23 right onto I-86 and then onto I-84 culminating with</p> <p>24 a wreck in Jerome County.</p> <p>25 Just one little, I guess, anecdote.</p> <p>6</p>

<p>1 Talking to the officers involved in this chase, one 2 of those was the sheriff in Minidoka County, and 3 basically she was passing people all over the place, 4 being very unsafe, actually pulled out in front of 5 him. He had to the slam on his brakes in order to 6 avoid hitting other cars, so this was a very 7 dangerous situation. Not just for policemen, which 8 to me is important as part of our protection of the 9 community situation, but also for everyone else on 10 that road from Blackfoot to here. Every person on 11 that road, every trucker, every family, everybody 12 was in danger because of Ms. Prestwich's behavior.</p> <p>13 Now, she says in her version here, "It 14 started when I was being pulled over for whatever 15 reason." I guess "not know" means I do not know, I 16 assume. But then she goes on to say, "I had 17 warrants out of Ada County, a year on one and 18 three years on the other." She knew she was 19 basically avoiding capture and she knew the jig was 20 up, so she endangered everybody and decided to run 21 away as opposed to pulling over and taking care of 22 her business.</p> <p>23 I think they threw spike strips at least 24 one other time. That's a pretty dangerous situation 25 obviously, again, for the people driving down the</p> <p style="text-align: center;">7</p>	<p>1 road. Anyway, then if you start on the bottom of 2 page four and we start with her -- some criminal 3 information, we go through page five, page six, page 4 seven, and then part of page eight, a good solid 5 prior record. That's something you could be proud 6 of, I guess.</p> <p>7 This is especially concerning, I think, 8 Your Honor, because one of those crimes was exactly 9 this same crime, and she -- I think they said she 10 got a rider in that matter back in, I think, 2005. 11 I believe she got it in 2010. Anyway, she was 12 relinquished on her rider because she didn't do a 13 good job and served her time, served the five years. 14 I hope I have the numbers. I think it was 2010 when 15 she got out. Again, the same exact behavior. 16 Again, almost like she's proud of doing this. All 17 she had to do was pull over. She might have gotten 18 arrested for a couple of misdemeanors or something 19 like that, but we certainly wouldn't be here today.</p> <p>20 I'm begin to wonder if these things 21 actually matter anymore, but I'm going to go through 22 it anyway. You know, punishment, deterrence, 23 rehabilitation. We really seem to be going way, way 24 toward the rehabilitation issue, but the problem is 25 we've tried that with her, and it failed because of</p> <p style="text-align: center;">8</p>
<p>1 her performance up at the rider program. Here we 2 are again. I'm not a fan of basically putting all 3 the other people on the road at risk just so we can 4 try and see if maybe this time she'll be better. I 5 don't see it in the report that she's going to be 6 better. But then, again, our main focus is supposed 7 to be protection of the community, and this woman is 8 dangerous to everyone who drives on the freeway or 9 any road, for that matter, if she's out. We at 10 least save -- the next five years will be safe. 11 That's all we can do with her.</p> <p>12 On 19-2521 -- again, I'm not sure if this 13 applies anymore, but I'm going to go through it 14 anyway, (1)(a), (b), (c), (d), (e), (f). They all 15 apply to her. Undue risk that she'll commit another 16 crime. She needs correctional treatment. It would 17 be most effective, for the community, in an 18 institution.</p> <p>19 A lesser sentence will depreciate the 20 seriousness of the crime, and imprisonment will 21 provide appropriate punishment and deterrence for 22 the defendant or the deterrence for other folks in 23 the community.</p> <p>24 And (f), she is, in fact, a multiple 25 offender and/or -- it says or -- a professional</p> <p style="text-align: center;">9</p>	<p>1 criminal. She is, in fact, a professional criminal. 2 Then you have the grounds which might 3 weigh in favor of avoiding a sentence of 4 imprisonment. Again, you go through these and 5 neither caused nor threatened harm? You bet it did. 6 Did not contemplate. Of course she knew she was 7 causing danger to other people.</p> <p>8 I'm not sure that being afraid of getting 9 arrested on warrants she's been avoiding for four 10 years, or whatever it is, three years counts as a 11 strong provocation.</p> <p>12 Nothing excuses or justifies her conduct. 13 Nobody but her facilitated or induced the commission 14 of the crime.</p> <p>15 There's no way the defendant can 16 compensate the victim in this case other than going 17 to jail.</p> <p>18 She does, in fact, have a history of 19 prior delinquency. It says, "or has led a 20 law-abiding life." She certainly has not done that.</p> <p>21 Now, (h) is really interesting to me. 22 Her conduct was a result of circumstances unlikely 23 to recur. Well, we know they occurred ten years 24 ago. She got -- five years ago, and here we are 25 five years later, and we're in the same place we are</p> <p style="text-align: center;">10</p>

<p>1 ten years ago. It will certainly recur.</p> <p>2 And I just, again, cannot go through the</p> <p>3 report and think to myself that she's -- that her</p> <p>4 character and attitude indicates that the commission</p> <p>5 of another crime is unlikely. I simply do not see</p> <p>6 that. So it is the recommendation of the State in</p> <p>7 this case that she serve five years fixed in prison,</p> <p>8 have her privileges suspended for three years once</p> <p>9 she's let out.</p> <p>10 THE COURT: Thank you.</p> <p>11 Ms. DePew.</p> <p>12 MS. DEPEW: Thank you, Your Honor. Your</p> <p>13 Honor, during this case I have had the opportunity</p> <p>14 to spend quite a bit of time with Misty. She is</p> <p>15 difficult to get to know. She's very guarded. I</p> <p>16 think I have maybe chipped the iceberg a little bit</p> <p>17 with her in speaking to her about this case.</p> <p>18 I think it's important to note for the</p> <p>19 record this case obviously went almost all the way</p> <p>20 to trial. That was an attorney decision in a</p> <p>21 conversation about the elements of that aggravated</p> <p>22 assault claim -- charge in this case. Misty has</p> <p>23 never since day one at her arraignment, her video</p> <p>24 arraignment, not taken full responsibility for the</p> <p>25 alluding matter. I was the first appearance</p> <p style="text-align: center;">11</p>	<p>1 attorney at her arraignment, and it was her desire</p> <p>2 to try to plead guilty to that alluding then. The</p> <p>3 only thing that prevented that plea was her</p> <p>4 following my advice with regard to the aggravated</p> <p>5 assault charge. She would have gone to trial and</p> <p>6 admitted the elements of that crime from the</p> <p>7 beginning. That's never been something she's</p> <p>8 contested. She's never not taken responsibility for</p> <p>9 her actions.</p> <p>10 Judge, I've spent a lot of time talking</p> <p>11 to Misty about this case and what happened, and the</p> <p>12 reality is I don't think she knows what made her do</p> <p>13 what she did. Fear of going back to jail. Once she</p> <p>14 made one bad decision, she just couldn't stop.</p> <p>15 She'd made the bad decision. She was in a lot of</p> <p>16 trouble, so serious thinking errors took over.</p> <p>17 She knows that she put people at risk,</p> <p>18 including herself, but most particularly other</p> <p>19 innocent people on the road. Those are all things</p> <p>20 she's absolutely internalized, Judge, and knows</p> <p>21 without a doubt, and did from the very beginning of</p> <p>22 this case.</p> <p>23 Judge, I'm not going to go through every</p> <p>24 factor to be considered. We are not standing here</p> <p>25 saying that Misty doesn't need treatment. In</p> <p style="text-align: center;">12</p>
<p>1 discussing her prior alluding with her, she was an</p> <p>2 18-year-old kid. She acknowledges she had quite the</p> <p>3 chip on her shoulder. She went into the rider, got</p> <p>4 a DOR for passing notes without permission and then</p> <p>5 lying to the staff about it, was relinquished on</p> <p>6 that rider and chose to top out her time rather than</p> <p>7 do any programming.</p> <p>8 So what we have is an 18-year-old girl</p> <p>9 who went into prison and did five years straight</p> <p>10 with no programming. It indicates to me, again,</p> <p>11 Judge, going to that tip of the iceberg where</p> <p>12 Misty's really good at talking about how good things</p> <p>13 in her life were and good things in her family were.</p> <p>14 That's not an indication to me that things were</p> <p>15 great on the outside or she would have wanted out,</p> <p>16 and she didn't. She chose not to program so that</p> <p>17 she wouldn't parole and that she would just top her</p> <p>18 time.</p> <p>19 After she was released, she did start to</p> <p>20 develop some relationships. At her preliminary</p> <p>21 hearing her former employer as well as her</p> <p>22 girlfriend and several other of her friends were</p> <p>23 here on her behalf. The time that she spent in</p> <p>24 custody she's ended the one relationship. Obviously</p> <p>25 her employer can't continue to come back and forth</p> <p style="text-align: center;">13</p>	<p>1 to court from Idaho Falls, but they have had regular</p> <p>2 contact with my office. All indications that during</p> <p>3 that five years, although there were some</p> <p>4 misdemeanor driving issues, obviously these issues</p> <p>5 in Ada County, Misty did try to get on her feet and</p> <p>6 work and develop relationships that were solid. I</p> <p>7 question how solid they were. Misty may or may not</p> <p>8 appreciate me saying this, but her girlfriend was in</p> <p>9 District Court on a possession charge in Twin Falls</p> <p>10 County last month when I happened to be over there,</p> <p>11 so I think it's good that Misty has cut her out of</p> <p>12 her life. Hopefully she'll continue on that path.</p> <p>13 So, again, I question how great some of</p> <p>14 her choices were and her lack of programming, Judge,</p> <p>15 but we fully acknowledge that Misty needs some help,</p> <p>16 that these are not things that your average</p> <p>17 upstanding citizen does, that this is not the</p> <p>18 lifestyle that your average citizen leads, and that</p> <p>19 what she did, put people at risk, she fully</p> <p>20 acknowledges that.</p> <p>21 We're asking this Court to consider a</p> <p>22 rider. Not with any guarantee of probation but to</p> <p>23 see if Misty can actually do a rider this time and</p> <p>24 to make a determination upon completion of that</p> <p>25 rider whether or not she is an appropriate risk for</p> <p style="text-align: center;">14</p>

APPENDIX B

<p>1 supervision. Frankly, I don't think we know that 2 right now. I think there's a lot about Misty and 3 her situation that we don't know. Again, she's very 4 guarded. And I've tried to get to know her as best 5 I can, but obviously the attorney/client 6 relationship isn't a counselor/patient relationship; 7 although sometimes it is, but not to the extent that 8 it would be with treatment.</p> <p>9 Judge, in the alternative, we are asking 10 this Court to consider a one fixed, four 11 indeterminate to allow her to go before the parole 12 commission, to allow her to program this time if she 13 choses to. I believe she will choose to. That's 14 something she very much wants that she's expressed 15 to me. So that would give her a significant tail 16 hanging over her head. The parole commission could 17 determine whether or not she is a sufficient risk 18 after evaluation.</p> <p>19 So those are the two alternatives that 20 we're proposing to this Court. We're not in any way 21 sitting here saying that she could be automatically 22 considered for probation or that a rider is any 23 guarantee that she would get probation. We would 24 just like to see a shorter period of evaluation 25 process to determine whether or not some treatment</p> <p style="text-align: center;">15</p>	<p>1 would work for her.</p> <p>2 THE COURT: Thank you.</p> <p>3 Ms. Prestwich, anything you wish to share 4 with the Court?</p> <p>5 THE DEFENDANT: No, Your Honor.</p> <p>6 THE COURT: All right. The Court, for 7 purposes of sentencing, does consider the four goals 8 of sentencing. Certainly given the nature of 9 underlying offense, protection of society is this 10 Court's primary concern. That's not to suggest that 11 the Court does not consider the related goals of 12 rehabilitation, retribution, and deterrence, because 13 it does, but certainly protection of society is this 14 Court's concern.</p> <p>15 The Court also does consider those 16 factors under 19-2521 to determine whether probation 17 or some form of incarceration is appropriate under 18 the circumstances. The Court, in that regard, does 19 consider the character of the offender, the nature 20 of the underlying offense, as well as defendant's 21 prior record.</p> <p>22 The Court has reviewed in detail the 23 presentence investigation report. The Court notes, 24 Ms. Prestwich, that you have a significant prior 25 record for the same behavior that we're here for</p> <p style="text-align: center;">16</p>
<p>1 today. The Court is aware that you have a prior 2 misdemeanor alluding charge as well as a prior 3 felony alluding charge. The Court does recommend 4 that you were a little bit younger when you picked 5 up those charges, but certainly with the facts and 6 circumstances of this case demonstrate is your lack 7 of concern or consideration for the safety of 8 others, your lack of respect or consideration for 9 law enforcement and the motoring public in general. 10 Certainly, your behavior on this day in question 11 just because -- according to your own statement just 12 because of some outstanding warrants that you were 13 not willing to take responsibility for or to be 14 accountable for, you decided, you made the choice, 15 to put the lives of others at risk.</p> <p>16 It is troubling. Most of the time we see 17 people who have mental health issues, drug issues, 18 alcohol issues, but according to your own 19 statements, those factors don't apply. Drugs and 20 alcohol didn't play a part here. Emotional distress 21 did not play a part here. You made a conscious 22 decision to do whatever you could to avoid being 23 stopped by law enforcement.</p> <p>24 Clearly, for a substantial time now, you 25 don't have a stable home life. You don't have a</p> <p style="text-align: center;">17</p>	<p>1 stable history of employment. What you do have is a 2 stable and consistent history of violating the law 3 and a stable and long history of placing the lives 4 of others at risk.</p> <p>5 So as to the charge of alluding a peace 6 officer, the Court will impose total court costs. 7 The Court will require you reimburse the department 8 a sum not to exceed \$100 for the PSI. The Court 9 will impose a fine of \$1,000. The Court will impose 10 penitentiary time of five years, five years fixed, 11 no indeterminate. Credit for time served is 12 224 days calculated from March 10th to October 19, 13 2015. The Court, under the circumstances, does not 14 believe that probation or retained jurisdiction is 15 appropriate under the circumstances given the 16 serious nature of your behavior and the fact that 17 the Court does not believe that you are appropriate 18 for community supervision.</p> <p>19 As I understand it, Mr. Horgan, there is 20 no restitution?</p> <p>21 MR. HORGAN: Not that I know of, Your Honor.</p> <p>22 THE COURT: All right, then. The Court, then, 23 will advise the defendant that she does have 42 days 24 from the file stamp from within which to appeal. If 25 she cannot afford the cost of the appeal, she may</p> <p style="text-align: center;">18</p>